THE HON'BLE SRI JUSTICE K.C.BHANU

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W.P.NOs.17040,20336 & 18598 OF 2004

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Date: 12-08-2005

WRIT PETITION NO : 17040 of 2004

Between:

1 Kilaparthy Venkata Satesh S/o. Late. K.V. Naidu
Butchanna Koneru, Vizianagaram Town and District and others.

..... PETITIONERS

AND

1 Transmission Corporation of A.P., Ltd., rep. by its Managing Director,
Vidyut Soudha, Hyderabad and others.

……RESPONDENTS

WRIT PETITION NO : 20336 of 2004

Between:

1 A. Ranga Rao, S/o Perraju,

..... PETITIONERS

AND

1 Transmission Corporation of A.P. Ltd, rep. by its Managing Director,
Vidyut Soudha, Hyderabad and others.

RESPONDENTS

WRIT PETITION NO : 18598 of 2004

Between:

1 B. Narayana Rao, S/o. B. Gopal Rao,
R/o. Alibani Street, RTM Junction, Nellimerlal Post,

Vizianagaram District and others.

..... PETITIONERS

AND

1 Transmission Corporation of A.P. Limited, Rep. by its Managing Director, Vidyut Soudha, Hyderabad and others

RESPONDENTS

THE HON'BLE SRI JUSTICE K.C.BHANU

W.P.NOs.17040,20336 & 18598 OF 2004

COMMON ORDER:

Since the issue involved in these writ petitions is one and the same, they are being disposed of by a common order.

All the writ petitions are filed challenging the proceedings in Memo No.CGM(HRD)/DS/AS(IR)/PO(IR)/D.No.2346/2004, dated 31-08-2005, whereunder the respondents 1 and 2 decided to regularize the services of the village electricity workers, who are now working as Contract Junior Line Men in the 137 sanctioned posts of Junior Line Men in Vizianagaram Operation Circle, without considering the candidature and eligibility of

the petitioners and the other contract labour, who have put in longer service as contract labour, as illegal and arbitrary and consequently to direct the respondents to consider and appoint the petitioners as Junior Line Men in the 137 sanctioned posts

of Junior Line Men in Vizianagaram Operation Circle.

The brief facts that are necessary for the disposal of the present writ petitions may be stated as follows:

All the petitioners have worked for sometime as
Contract Labour in different offices under the control of the respondents-Corporation. Their services were discontinued for accommodating different set of contract labour engaged by a different contractor. They submit that they are fully eligible for regular appointment to the category of Junior Line Men. Earlier, claiming regularization, they have filed W.P.Nos.2551 and 2425 of 2000 before this Court and this Court by an order dated
15-03-2001, dismissed the said writ petitions. Aggrieved by the same, the petitioners have also filed writ appeals, which are pending. The petitioners submit that the present policy decision taken by the respondents 1 and 2 is not only arbitrary, but it is intended to confer the benefit of regularization only on identified and selected number of village electricity workers who are working as contract Junior Line Men for the last two years. The contract labourers are to be treated as equals and no preferential consideration can be shown to the village electricity workers, who are working at present as contract Junior Line Men. The category of village electricity workers is totally different from the contract labour. If all the sanctioned 137 posts are to be filled up in accordance with law, it is incumbent on the respondents to issue a proper recruitment notification, which would give an opportunity to the petitioners and others to compete for the recruitment process or in the alternative to formulate a common pool for all those contract labourers. Thus, the action of the respondents in overlooking the case of the petitioners is illegal and arbitrary. Hence, the present writ petition.

A detailed counter affidavit has been filed by the respondent No.3 stating that in the APTRANSCO and erstwhile APSEB, Civil Electrical workers and maintenance

works are being entrusted on contract basis under unit rate duly calling for open/limited tender system and such works are being awarded to the lowest tender and not exceeding the approved schedule of rates. Thus, the APTRANSCO's obligation is to arrange payment for the quantum of work done and there is no connection with contract labour and this was clearly specified in the agreement conditions. Further, the work will be awarded from time to time to different contractors basing on the competitive rates and as per rules. Thus there is no scope to continue the same contractors. Hence, the plea of the petitioners that they are directly connected to APTRANSCO is not at all acceptable and the payments are also being made to the registered contractors only at the approved rates as per specified unit. The respondents are simply implementing the policy decision of the Government in absorbing contract Junior Line Men to the post of Junior Line Man and therefore, the claim of the petitioners cannot be considered.

The learned counsel appearing for the petitioners contended that the petitioners have worked as contract labourers in the operation/maintenance circle and that there was a permanent perennial nature of work available; that the

issuance of circular No.B.P.(P&G per).Ms.36 dated 18-05-1997 is discriminatory, because as per the said circular, the first respondent has taken a policy decision that a particular type of employees were identified for absorption or regularization; that the case of the writ petitioners stands on the same footing with that of the Contract Junior Line Men, whose services have been regularized. He further contended that the petitioners are fully qualified for appointment as Junior Line Men and if any posts have been notified, the respondents should give an opportunity for the petitioners to participate in the interviews and that

the case of the contract Junior Line Men, who have also worked as contract labourers, has to be treated on par with the petitioners. Therefore, identifying the contract Junior Line Men for regularization is discrimination and no preferential treatment can be shown to the village electricity workers, and hence, he prays to

allow the writ petition.

On the other hand, the learned counsel appearing for the respondents contended that the subject matter of the issue has already been decided by this court in W.P.Nos.2425 and 2551 of 2000, dated 15-03-2001 and against that orders writ appeals are pending; that as the petitioners have worked only for some time, they cannot be absorbed automatically and that they were entrusted with some work under unit rate only duly calling for tender system; that the impugned proceedings are based upon the policy decision of the Government of Andhra Pradesh; that the works attended by the contract labourers and the village electricity workers are entirely different, and therefore, there are no grounds to interfere with the impugned proceedings.

In all these writ petitions, the challenge was made with regard to the proceedings of the respondents dated 31-08-2004 whereunder the Chief General Manager of the Eastern Power Distribution Company Limited requested all the Superintending Engineers/Operation in APEPDCL to regularize the services of the village electricity workers, who have already been working as contract Junior Line Men, who are satisfying the following conditions:

1. The candidates should have completed two years of service.

2. Special reports shall be called for from the concerned AE/AAE under whom they are working to evaluate their performance.

3. The O&M Tests as prescribed in regulations such as pole climbing, meter reading and Reading and Writing shall be conducted and marks awaited as follows.

It is also stated that only successful candidates shall be considered. All the Superintendent Engineers are requested to complete the exercise as quickly as possible and to furnish the list of candidates whose services have to be regularized.

The said notification is challenged on two grounds, namely, i) if the respondents have issued a proper recruitment notification, they would have given an opportunity to the petitioners to compete for recruitment process and ii) that the action of the respondents in overlooking the case of the petitioners whose case is similarly situated with that of the contract Junior Line Men, is illegal.

It is not in dispute that all the petitioners have worked as contract labourers for some time with the respondents in the different offices under the control of the Divisional Engineer Vijayanagaram. The services of the petitioners were discontinued for accommodating different set of contract labour engaged by a different contractor. It is the case of the petitioners that they are fully eligible for regular appointment in the category of Junior Line Man. The further case of the petitioners is that the work of the contract labourers, like petitioners, and the erstwhile village electricity workers is one and the same. The nature of duties and functions is also one and the same. Therefore, the petitioners should have been considered for regularization to the post of Junior Line Men.

The sum and substance of the case of the writ petitioners is that there was a discrimination that the decision must pass the test of reasonableness so as not to fall on the touchstone of Article 14 of the Constitution of India. The discrimination, if any, can arise as between the persons, who are similarly, if not identically, situated. It is stated that all the contract labourers are to be treated as equal and their case is similarly situated with that of erstwhile Junior Line Men.

On the other hand, the specific case of the respondents is that the nature of work attended by the contract labourers and the village electricity workers is entirely/totally different, and therefore, there is a discrimination. So, it is for the respondents to appoint the persons to the post of Junior Line Men, considering the nature of work involved. Unless it is shown that the nature of work attended by contract labourers and the village electricity workers is one and the same, the

question of discrimination does not arise. There is no factual foundation as to the nature of functions and duties of a contract labour, when the petitioners have worked with the respondents-corporation. So also, it is not specifically stated as to the nature of duties and the work attended by the village electricity workers so as to arrive at a conclusion that the nature of duties and functions of the contract labourers and the village electricity workers are one and the same.

Some of the petitioners have earlier approached this Court by filing the said writ petitions, whereunder this court directed the respondents to consider the claim of the petitioners for absorption, if they are otherwise eligible. But, the petitioners are failed to produce a contractor licence, whose licences have been issued by the competent authority, and therefore, their case for appointment as Junior Line Men is rejected. Now, the petitioners are challenging the proceedings of the respondents dated 31-08-2004, wherender a direction was given to the Superintending Engineers to regularize the services of the village electricity workers who are already working as Contract Junior Line Men subject to certain conditions.

Differential treatment does not *per se* constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation. In order to pass the test of permissible qualification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. Mere differentiation or inequality of treatment does not per se amount to discrimination with the inhibition of the equal protection clause. To attract the said ratio, it is necessary to show that the selection or differentiation is unreasonable and arbitrary.

As already pointed out, the nature of work of contract labourers and the erstwhile village electricity workers was not shown to be the same. It is possible to give a different treatment to a particular section of workers, considering the work they have been attending to. So, in the absence of any factual foundation with regard to the nature of functions and duties of the contract labourers and the village electricity workers, giving preference to the village electricity workers cannot be said to be arbitrary and discrimination.

It is for the respondents to take a policy decision for giving opportunity to the workers whose services are required for the department for proper functioning of the system. In that process, for the purpose of achieving the object, the respondents can take a policy decision. Such a policy decision is not shown to be arbitrary and illegal in view of the fact that such policy decision would deny the opportunity of the petitioners to compete for the recruitment, if a recruitment notification was given for filling up the posts. The policy decision taken by the Government has not been challenged as violative of Article 14 of the Constitution of India. As per the Board meeting in proceedings No.B.P.(P&G per).Ms.36 dated 18-05-1997, the board has re-examined the issue in the light of the orders issued by the Government in filling up of the posts and stated that the contract labour other than those engaged in 33 abolished categories in generating stations shall be considered for selection and appointment against 50% of the existing vacancies. It is also clear that as per the agreement dated 05-03-1995, the case of the village electricity workers shall be considered for appointment against 50% of the existing vacancies subject to condition that if they are eligible. The said policy decision has not been challenged by the petitioners. So, the impugned proceedings are only a consequential proceedings in pursuance of the policy decision taken by the Board in proceedings No.B.P.(P&G per).Ms.36 dated 18-05-1997. Unless the policy decision is challenged, the action of the respondents cannot be termed as illegal and arbitrary. The impugned proceedings have been issued to implement the policy decision.

Hence, there are no merits in the writ petitions.

The writ petitions are totally devoid of merits and accordingly, they are dismissed. No costs.

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JUSTICE K.C.BHANU

Date: 12-08-2005.

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